

Public inquiry guidance: advice to inquiry teams

This is guidance only. Although it is designed primarily for future inquiries created under the statutory framework of the Inquiries Act 2005 (the 2005 Act), the advice could also assist those who are considering the establishment of future non-statutory inquiries and reviews.

It is therefore not intended to provide a prescriptive list to be followed in all circumstances, particularly in the case of non-statutory inquiries and reviews. It seeks to ensure that inquiries are conducted as effectively and rigorously as possible, whilst assisting those who are conducting them to be in as strong a position as possible to deliver justified conclusions.

This guidance, and the Guidance for Sponsor Teams, attempts to bring together our collective knowledge to be considered at each stage and represents an attempt to avoid the repetition of the problems which have been encountered by previous statutory inquiries. Inquiry teams should familiarise themselves with this guidance and the Guidance for Sponsor teams and lessons learnt reports from previous inquiries. They should also make sure that they understand the statutory framework within which the inquiry will operate (Inquiries Act 2005 and Inquiries (Scotland) Rules 2007).

Unless otherwise specified, references to inquiries should be taken to be references to public inquiries established under the 2005 Act.

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1. Abbreviations and acronyms

2005 Act	The Inquiries Act 2005
2016 Act	The Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016
2007 Rules	The Inquiries (Scotland) Rules 2007
FAI	fatal accident inquiry
FOI	freedom of information
GDPR	General Data Protection Regulation
HR	Human Resources
NRS	National Records of Scotland
PR	public relations
SCAI	Scottish Child Abuse Inquiry
SGLD	Scottish Government Legal Directorate

2. Inquiry stages

Inquiries all tend to follow similar stages. This chapter outlines those stages, although it should be noted that more complex inquiries may have good reason to repeat stages or run stages concurrently. Before looking at the detail of how inquiries are established it is important to note at the outset that 2005 Act inquiries are, once established with agreed terms of reference in which Ministers have final say, completely independent of Ministers. The government bears the costs of an inquiry, and therefore has a 'sponsor' role, but the inquiry is run by the independent chair who is appointed at the outset (more on which at page 12).

An inquiry also has no 'legal personality' and cannot therefore be sued or judicially reviewed in its own name. Notwithstanding the lack of legal personality, inquiries are still likely to need to put in place various operational workarounds (e.g., entering into contracts for essential services or accommodation), and this guidance aims to help explain how this can be done by sponsor teams.

2.1 Establishing an Inquiry

Before an inquiry can begin, the following should be done:

- establishment of inquiry sponsor team within Scottish Government;
- announcement of the inquiry by Ministers;
- appointment of the chair and agreeing terms of reference; and
- appointment of secretary and solicitor to the inquiry.

After the appointment of the secretary and solicitor to the inquiry, the chair and this core inquiry team should meet as early as possible to agree processes and a work schedule for the inquiry.

A provisional work schedule should, at the minimum, include:

- dates of milestones for witness statements being submitted to the inquiry;
- dates of oral proceedings; and
- if possible, the proposed date for publication of the report or the proposed date for delivery of the report to the Minister.

In addition, the following administrative tasks should be completed:

- Finding and setting up inquiry office(s),
- recruitment of staff and
- obtaining technical support.

2.2 Initial/preparatory work of the inquiry

While hearings and calls for evidence tend to be the visible and widely reported on stages of an inquiry, there is often a significant amount of preparatory work to be undertaken by the inquiry team before those can take place, including:

- retrieving and reviewing public documents in order to scope what future investigative work is required;
- meeting with the key personnel involved in the project;

- recovering and reviewing all relevant documentation from parties who have an interest;
- identifying core participants, potential witnesses, expert specialists, and potential areas for further consideration;
- obtaining written statements from potential witnesses; and
- determining the uncontested facts.

An inquiry should resist being pressurised into early oral hearings, in particular to ensure that the above steps can be completed which, in turn allows for hearings to be carried out by a well-informed inquiry team.

3. The inquiry record

Rule 16 of the 2007 Rules set out the requirements placed on the chair in relation to transferring the inquiry record to the appropriate public records office. In Scotland this is the Keeper of the Records of Scotland.

The rules aim to ensure that the chair keeps a comprehensive and well-ordered record and, in the case of Scottish inquiries, requires them to consult with the Keeper at the earliest opportunity on creating, maintaining and transferring the record. This means that, ultimately, there will be a comprehensive permanent record of the work carried out by the inquiry.

NRS is in the best position to provide the inquiry with guidance on how to manage its records throughout the inquiry process to mitigate end-of-life issues.

NRS is currently in process of producing a guidance document similar to this on record keeping which they can supply to the chair / secretary.

3.1 Formal call for evidence

Once background documents have been obtained, the inquiry can begin to commission written statements or oral evidence from interested parties. This will be the opportunity for people to provide written evidence to the inquiry. The parties who have been identified as core participants will have the opportunity to make their views known, but other interested parties may also submit their views. The opportunity for people to provide written evidence to the inquiry is likely to continue throughout the duration of the inquiry. Section 21 of the 2005 Act states that the chairman can require a person to attend a hearing to give evidence or provide a written statement, produce any documents in his custody or under his control that relate to a matter in question at the inquiry, and/or to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.

3.2 Preliminary hearing

A preliminary hearing should be held as soon as possible after the setting up of the inquiry, at which the chair can set out what has already been done, set out basic procedures, specify the focus of the inquiry and when and how the inquiry hearings will operate. These matters will need to be written and agreed by the Inquiry team in the first instance. The chair can reiterate the invitation to submit evidence and make clear the arrangements for core participants, legal representation and public funding.

At this stage, depending on the information already received, an interim report may be published which will focus on the work of the inquiry on specific areas of concern or contention – or it may determine how the inquiry is going to address separate, specific issues, in what order and when.

3.3 Review of the written evidence

This is very much an ongoing process, and will be a review of written evidence, including but not limited to, written statements which have been submitted. This evidence will often help to inform what further evidence is required at oral hearings. The review can be a substantial exercise depending on the number of documents produced.

3.4 Oral hearings

It is anticipated that there will be some oral hearings in virtually all inquiries, at which specified witnesses will be asked to appear. Not everyone who lodges written submissions will be invited to give oral evidence.

Once it has been established how many hearings will likely be needed and the subject area for those hearings, a witness schedule should be drawn up to feed into the inquiry timetable and to make optimum use of available sitting times for the oral hearings.

The 2007 Rules contain more detailed provision on the conduct of oral proceedings for inquiries held under the 2005 Act.

3.5 Publication of evidence

All documents presented at the oral hearings, transcripts of the hearings, and any written evidence (such as statements and submissions) submitted to the inquiry will be published on the inquiry's website.

3.6 Final report and recommendations

The chair will review all of the evidence submitted and information obtained by the inquiry, in order to produce a final report. It is usual for the terms of reference of 2005 Act public inquiries to require the inquiry to make recommendations. Even

when recommendations are not required, they can still be included in a final report if the chair considers them to be relevant to the terms of reference.

4. Starting up an inquiry: summary of initial steps

4.1 The inquiry sponsor team

After Ministers decide to hold an inquiry, a sponsor team within the Scottish Government will have been established. The sponsor team will usually sit within the policy area of the subject matter of the inquiry and the team will co-ordinate actions across Government interests. Once the inquiry team itself is established, regular meetings should take place between the sponsor team and the inquiry secretary and their team. This is essential, in part because the budget for the inquiry will be provided from the budget of that team's directorate and part of their remit is to keep tracks of costs. This should form the basis of a management agreement between the sponsor team and inquiry.

4.2 Immediate tasks

The sponsor team will have made a start on the following tasks.

- Announce the inquiry
- Appoint the inquiry chair, agreeing draft terms and conditions
- Draft the proposed inquiry terms of reference for discussion between Ministers and the chair
- Agree terms of reference
- Assist with recruiting the inquiry solicitor, secretary, and counsel (as required) - agreeing draft terms and conditions with relevant interests
- Draft framework documents
- Consider costs
- Resource the inquiry: identify and secure necessary staff and other resources and co-ordinate corporate support functions including HR.
- Begin the process of sourcing office accommodation
- Provide induction and other guidance materials to the chair and any other members of the panel

After the appointment of the chair, these tasks increasingly involve the inquiry team. However the beginning of an inquiry is a period of transition, so the inquiry team should work closely with the sponsor team to ensure that division of responsibility is clear as the inquiry is set up.

5. Terms of reference

When appointing the chair of the inquiry the Minister must specify the date which is to be the setting up date of the inquiry and must, before that date, set out the terms of reference of the inquiry.

The setting up date should therefore be set such that the terms of reference can be discussed with the chair before they are finalised. After the setting up date, the inquiry will truly become independent of the Scottish Government.

The terms of reference should always make clear:

- to whom the inquiry should report;
- the purpose of the inquiry; and,
- whether the inquiry is being invited to review policy in a given area, consider the facts of a particular case, and/or make recommendations.

The chair should agree that the proposed terms of reference for the inquiry will enable the determination of facts required by Ministers and may want to wait until advice from the solicitor to the inquiry team is available. The chair should be permitted a reasonable period to consider the terms of reference.

The terms of reference will be specific to each inquiry, but in all cases there is an important limit on their scope. They will need to address the relevant matters of public concern, but it is important to avoid all-encompassing or open ended remits as these can have profound consequences for the time taken to complete, and therefore the cost of conducting, the inquiry. Taken alongside the requirements placed on the chair, to avoid unnecessary expense and stay within scope, the terms of reference should assure Ministers that the inquiry will deliver value for money.

6. Recruiting the inquiry team

In line with the 2007 Rules, the secretary and solicitor to the inquiry are appointed by the chair. In practice, these posts are often filled by civil servants on assignment from the Scottish Government. Where SG staff are appointed to an inquiry, their day-to-day responsibilities are to advise the chair and not their home department. It is recommended that protections are put in place for any seconded staff to ensure that their treatment is as per expectations of any other civil servants. This could be done via the terms of appointment of the chair setting out standards of behaviour towards SG staff.

Section 39 of the 2005 Act states that they are paid "such remuneration and expenses as the Scottish Ministers may determine".

In practice, therefore, the chair and Ministers should discuss proposals in connection with the appointment and remuneration of the core inquiry team (secretary, solicitors and counsel) before appointments are made.

When the secretary and the solicitor to the inquiry are appointed, their respective responsibilities should be clear in the job descriptions they agree to fulfil, subject to any changes required by the chair to meet how the chair wishes the inquiry to operate. There has been evidence of uncertainty in certain inquiries as to who has the final say in, for example, a legal issue with financial implications. In such situations tensions can arise and clarity as to accountability can go some way to avoiding such situations.

6.1 Secretary to the inquiry

If the secretary and or solicitor to the inquiry is appointed from SG, careful consideration will need to be given to line management relationships in order to ensure independence of the Inquiry. SG support will be provided to assist with this.

The key tasks for the secretary are to:

- review all relevant SG guidance, including lessons learned reports;
- write and agree Inquiry procedures and policies;
- establish an inquiry office, liaising with the sponsor department to ensure that it is adequately equipped, staffed and resourced. This includes viewing of properties and project management of design and fit-out, which can take some time;
- agree arrangements with the sponsor department for the preparation, management, monitoring and publication of the budget;
- make contact with SGLD to assist with the appointment of the inquiry solicitor if necessary;
- work with the chair and solicitor to produce a timetable and work plan covering issues including evidence, hearings, drafting the report, and key dates (such as when to send out warning letters to involved parties);
- ensure the inquiry team is properly inducted and familiar with the inquiry's procedures, the conduct expected of inquiry members and their responsibilities (including the need for confidentiality), as well as HR policies, including performance and appraisal, grievance procedures, security and health and safety;
- provide advice and support to the chair on general policy issues and inquiry procedures and in drafting the report;
- devise, implement, and deliver appropriate mechanisms for obtaining, handling, and secure storage of documents and evidence provided to and generated by the inquiry in line with guidance from the National Records of Scotland. The secretary is also responsible for arranging for the identification and archiving of records with long term historical value, as well as ensuring that a thorough sensitivity review has taken place on these records;
- meet with the Keeper before the setting-up date or as soon as practical after that point and consult the NRS on the manner of creating, maintaining and transferring the 'record of the inquiry' under rule 16 of the Inquiries (Scotland) Rules 2007. The Rules state that this is the Chair's responsibility but in practicality, the secretary, or other members of the secretariat on their behalf, meets with members of the Government Records team at NRS;
- liaise with interested parties to the inquiry;
- ensure that any hearing room(s) is/are fully equipped and operational;
- submit a 'Lessons Learned' report to Justice Directorate on conclusion of the inquiry. This report will be used to inform the operation of future inquiries and future refinements of this guidance.

6.2 Solicitor to the inquiry

The solicitor to the inquiry will usually be provided from within SGLD and will be the main source of advice on legal and procedural issues.

The key tasks for the solicitor are to:

- share past inquiry experience with the inquiry team (if they have any);
- provide legal advice and advice on procedures to the chair (including drafting warning letters where appropriate), handle the evidence and in some cases perform advocacy at any hearings;
- work with the chair and secretary to draft a work plan and procedures for the inquiry;
- prepare, with counsel where appropriate, an 'Issues List' setting out the issues for consideration by the inquiry and contribute to compiling the programme of witnesses;
- where counsel is to be appointed, take control of the selection process, instructions and manage their remuneration and expenses;
- manage the witness statement process for the inquiry;
- assess applications for awards of expenses or compensation by way of public funding and, if granted, agree and verify awards before payment;
- advise on any possible or actual judicial review; and
- draft evidential chapters for the inquiry report.

6.3 Combining roles

The roles of secretary and solicitor can be combined.

At the ICL Stockline inquiry, which was a joint inquiry with the UK Government, the two roles (secretary and solicitor) were undertaken by an English qualified solicitor appointed by the then Treasury Solicitor and supported by a deputy solicitor from SGLD. At the Fingerprint Inquiry, the roles were again combined, undertaken by a solicitor on secondment from SGLD. The Vale of Leven and Penrose Inquiries had separate appointees as secretary and solicitor, but all were on assignment from the Scottish Government. Deputies were also appointed to both posts. Clearly drafted appointment/assignment letters will ensure clarity as regards respective roles and responsibilities.

It seems to be more common in non-statutory inquiries to appoint a secretary and to seek legal advice as necessary. However, the larger and more complex the inquiry, whether statutory or non-statutory, the less feasible this would appear to be in practice. In addition, it should be noted that the role of solicitor to an inquiry includes some responsibilities set out in the 2007 Rules, therefore the person appointed must be qualified to assume those responsibilities.

6.4 Counsel to the inquiry and their fees

Where complex and voluminous issues which the inquiry has to consider lie outside what the solicitor can reasonably be expected to deal with, the inquiry chair may appoint counsel.

The question may arise as to whether counsel to the inquiry is needed at all; no counsel was appointed at the Chilcot Inquiry. Without counsel to the inquiry, however, the chair must take on the burden of preparing for the evidence sessions and asking the questions, which is a large and time-consuming undertaking. There is also perhaps a risk that matters are not pursued to a sufficient degree to enable legal certainty to permit appropriate findings in facts to be made.

It is understood that other inquiry chairs have valued the role played by counsel to the inquiry, as it allows the detail to be pursued by counsel, leaving the chair to concentrate on assessing the direction and quality of the evidence. It also avoids any suggestion that a robust line of questioning from the chair demonstrates that they have come to a view on a particular matter, whereas the intention will simply be to verify evidence. It would therefore appear that there are sound reasons for the need for counsel to the inquiry to be appointed.

Counsel to the inquiry is appointed by the chair. It is expected that the chair will consult the Scottish Government to confirm the appropriateness of remuneration and expenses proposed to be paid to counsel to the inquiry as Ministers pay these costs, which will be outlined in a determination.

7. Framework, and other, documents

The framework documents for an inquiry are:

- Terms of Reference (see separate Terms of Reference section)
- Management Agreement
- Section 39 determination
- Section 40 determination

The Terms of Reference and the Management Agreement set out what the inquiry is being asked to do, and how it will interact with the Scottish Government for the duration of its life. Drafts of these documents will have been prepared in sufficient time to be made available to the inquiry chair in order for them to consider whether they wish to take on the role.

Determinations under section 39 and section 40 of the 2005 Act set out detail regarding Ministers' payment of inquiry expenses and the inquiry's payment of witness expenses. These determinations can be made at any stage. They can be drafted alongside the draft management agreement or, for example, following consideration of how many legal staff the inquiry will engage and how many core participants and witnesses will take part in the inquiry.

Ministers remain responsible for meeting the costs of an inquiry. Although it is independently conducted, these three documents will set necessary limits on the scope and cost of an inquiry.

7.1 Management Agreement

The management agreement should be clear about the responsibilities and liabilities between the Scottish Government (in the main the sponsoring Directorate) and the inquiry itself. It should explain who the different key players in the inquiry are and

what the independence of the inquiry should mean. It should be clear about the financial controls and triggers relating to the inquiry.

As an example, the management agreement of the Undercover Policing Inquiry may be found at: <https://www.ucpi.org.uk/wp-content/uploads/2017/03/151214-UCPI-Management-Statement.pdf>

The agreement should also clarify some points of detail such as how the SG People Directorate will engage with the inquiry to support the operation of the inquiry from an HR perspective and fulfil the duty of care owed by the Scottish Government to any assigned SG staff.

There should be agreement on how monitoring of the progress of the inquiry will be carried out, including regular budget monitoring. This is generally carried out by way of a monthly monitoring meeting between the sponsor team and the inquiry team (though any important or emergency issue should be reported immediately).

7.2 Section 39 determination

Section 39 of the 2005 Act sets out that Ministers may determine the remuneration and expenses of the members of the inquiry panel, any assessor, counsel or solicitor to the inquiry and any other person engaged to provide assistance to the inquiry. The ability to set these rates is clearly an important tool for Ministers in seeking to control the budget of an inquiry. Section 39 also requires Ministers to publish the total amount that has been paid to the chair and the rest of the inquiry team, although FOI requests may lead to earlier disclosure of the rates that are paid.

7.3 Section 40 determination

In general, legal support should be available for any individual against whom allegations may be made in the course of the inquiry and/or who may be the subject of criticism.

On 29 January 1990, in answer to a Parliamentary question, the then Attorney General set out the basis upon which the Government would exercise its discretion to pay costs of participants at public inquiries:

"So far as the costs of legal representation of parties to any inquiry are concerned, where the Government have a discretion they always take careful account of the recommendations on costs of the tribunal or inquiry concerned. In general, the Government accept the need to pay out of public funds the reasonable costs of any necessary party to the inquiry who would be prejudiced in seeking representation were he in any doubt about funds becoming available. The Government do not accept that the costs of substantial bodies should be met from public funds unless there are special circumstances."

This is still the convention followed. The inquiry may be asked to consider requests for public funding from interested persons outside of Government but is not obliged to agree.

Legal aid is not available for inquiries.

Instead, the 2005 Act sets out, at section 40, the power for the chair to make awards. It states that the chair of an inquiry is permitted to award reasonable amounts to persons for:

- compensation for loss of time;
- expenses properly incurred, or to be incurred, in attending the inquiry (or otherwise); and
- legal representation of core participants and witnesses (including parties who are required to produce any document or other evidence)

The legal costs of Government witnesses might be met by the sponsoring department under the mechanism set out in section 40 of the 2005 Act, but not necessarily. If the witnesses were from a different department, their own department might pay for their representation, putting them in the same position as any other large organisation, to whom the inquiry would not usually grant funding. Expenses can also be paid to others - a person who, in the opinion of the chairman, has such a particular interest in the proceedings or outcome of the inquiry as to justify such an award.

The chair will need to assess witness costs and award reasonable expenses, provided that they were incurred solely to enable the witness to give evidence to the inquiry. The power to make such awards is subject to such conditions and qualifications as may be determined by Ministers. It should also be noted that separate arrangements are in place for current government officials¹. The civil service management code does not extend to former civil servants so if their legal costs were to be funded from the public purse, a different power to do so would have to be identified.

Although consideration should always be given to the specifics of a particular inquiry the determinations by Ministers under section 40 for recent inquiries in Scotland have all been very similar. While the hourly rate for counsel and solicitors may have to be uplifted to take account of inflation, the conditions would appear to be standard and would not appear to require too much amendment from inquiry to inquiry.

A clear section 40 determination will control costs for ongoing legal representation and permits the inquiry to set specified amounts for particular pieces of work.

SGLD advice should always be taken when drafting such a determination.

7.4 Finalisation and publication of a determination

Sponsor teams will draft determinations. As a matter of good practice, the chair will be consulted on the terms of any determination before they are finalised. Ministers will be asked to agree to their terms, though they do not require to sign them.

¹ <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>

The chair should be sent final versions and should make arrangements for the determination to be posted on the inquiry's website to ensure that they are accessible by the public.

7.5 Revision of a determination

Scottish Ministers may revise a determination at any time, though this should be in consultation with the chair.

If a determination is revised, the inquiry team will need to give consideration to anything that might have been done in reliance on the previous determination, particularly if the new determination might treat parties in a less favourable manner. It is therefore good practice for the sponsor to alert the inquiry team, at the earliest opportunity, to any changes.

An example of revised determination can be seen in the Scottish Child Abuse Inquiry, where a section 40 determination was amended in relation to the payment of travel time for legal representatives.

7.6 Restriction notices and orders

The 2005 Act places a duty on the chair to secure public access to inquiry proceedings and information. This is subject to any restrictions on attendance or disclosure, or publication of evidence or documents imposed by either

- a notice made by Ministers or
- an order made by the chair

both provided for in section 19.

These restrictions may be imposed, varied or revoked at any time before the end of the inquiry. As such they are not framework documents although, once in place, they do frame how the inquiry operates.

A restriction notice should be considered an exceptional occurrence as it may be perceived as impinging on the inquiry's independence. A protocol can be developed in relation to making restriction orders, if the chair feels that it is likely to be helpful given the subject of the inquiry.

A restriction notice or order may only specify restrictions if they are required by law, or the chair or as the case may be, Ministers considers them to be conducive to the inquiry fulfilling its terms of reference, or otherwise to be in the public interest. Section 19(4) and (5) set out the matters to be taken into account in making this judgment. A section 19 notice could be one means by which particularly sensitive information could be disclosed to the inquiry to aid the inquiry but in the knowledge the information will not be made public.

8. Inquiry costs

8.1 Accountability

It is for Scottish Ministers or, if the inquiry is a joint inquiry with the UK Government, sponsoring Departments, to meet the full costs of an inquiry.

Ministers are accountable to the Scottish Parliament for the overall funding of public inquiries in Scotland, but the chair of an inquiry has a statutory duty to avoid unnecessary cost placed on them by section 17 of the 2005 Act.

The chair is thus responsible and accountable for the proper management of public resources and expenditure on inquiry business. This accountability is normally through the inquiry secretary to the relevant Accountable Officer for the Scottish Government. This Accountable Officer will want to be assured that:

- the financial and other management controls applied by the sponsoring Departments to the inquiry are appropriate and sufficient to safeguard public funds and for ensuring that the inquiry's compliance with those controls is effectively monitored; and
- the internal controls applied by the inquiry conform to the requirements of regularity, propriety and good financial management.

All of the inquiry's costs fall on the sponsoring SG Directorate. The sponsor team will, therefore, have to make some estimate of the potential cost of the inquiry for its own budgeting purposes.

A monitoring process allows for some anticipation of costs. For those purposes the following model can be helpful, but the detail of such a monitoring process should be agreed between the sponsor team and the inquiry team:

- Initial budget estimate (sponsor team).
- Revised budget estimate (inquiry team – after initial deliberations of chair).
- Adjusted budget estimate (inquiry team – after incurring actual initial costs).
- Adjusted budget estimate (inquiry team - after core participants identified).
- Adjusted budget estimate (inquiry team - after initial hearings).
- Adjusted budget estimate: subsequent periods.
- Final budget estimate.
- Report of accounts.

The chair should prepare a preliminary budget for approval by the sponsor directorate within a reasonable timeframe agreed with the sponsor team. As a minimum, the sponsor team should ask for estimates to be prepared for the following:

- Total amount the sponsor department is likely to be required to pay.
- Administration – size of the inquiry team, grading, payments to the panel or experts, SG corporate services.

- Legal costs – including expenses and remuneration for any inquiry legal staff, and payments for the legal representation of core participants and witnesses.
- Travel costs – including training and visits for the inquiry team.
- Accommodation costs – office/space for inquiry team and evidence sessions.
- Running costs – stationery, postage, facilities, equipment.
- IT system and telecommunications.
- Publication costs – e.g., design, editorial, typesetting, proof reading of the report(s).
- Information Management costs – including maintenance of documentation for as long as required.
- Any other significant expenditure, including contingent liabilities.

Ministers are required to publish a broad breakdown of the costs of the Inquiry as soon as practicable after completion. Therefore, an accurate record needs to be maintained.

8.2 Administration of the inquiry costs/budget

The Fingerprint Inquiry operated on the basis of a zero-based budget (i.e. one that is based on prospective actual costs, rather than a budget being assigned to the inquiry). It is expected that future inquiries will adopt the same approach.

It is, therefore, essential that the sponsor team and the inquiry team meet on a regular basis to monitor the progress of the inquiry and its budget which will largely be determined by how long the inquiry will take.

It makes sound financial sense for an inquiry to use Scottish Government financial systems. An inquiry will, as a result, be subject to the same level of scrutiny as any other cost centre within Scottish Government. It can use SEAS, EASEbuy and the Government Procurement Card which will be familiar to any inquiry staff from the Scottish Government, and which provide a high level of security. This is ultimately a matter for the Chair.

An inquiry should seek to adhere to the Scottish Public Finance Manual (SPFM) financial limits and processes. If there are any circumstances whereby the inquiry team feels they cannot adhere to the SPFM this should be discussed with the sponsor team and the Finance Business Partner.

The sponsor team should make the inquiry aware of any changes to financial policy or processes in the Scottish Public Finance Manual.

8.3 Critical determining factors

The main factors which affect the overall cost of an inquiry are:

- the volume of evidence to be considered by the inquiry; and
- the length of time required to consider written evidence, to hold public hearings, to formulate conclusions and to write up the final report.

The overall cost of a public inquiry will therefore depend on:

- the remit of the inquiry;
- the complexity or peculiarity of the issues being investigated;
- the volume of evidence to be considered by the inquiry;
- the length of time required to consider written evidence, to hold public hearings, to formulate conclusions and to write up the final report;
- the number of people working on an inquiry, including the chair, secretary, solicitor, deputy solicitor(s), counsel, and other inquiry staff such as document managers, financial managers, IT, and administrative staff;
- any required expertise that needs to be bought in (e.g. media relations)
- the need for legal representation of core participants and witnesses;
- availability of suitable premises and their running costs; and
- any capital investments that may be required (including fitting out offices, specialist equipment or facilities, or reasonable adjustments for accessibility).

It is virtually impossible to predict all of these factors at the outset of the inquiry and thus it is important that sponsor team and Ministers are informed of any significant changes to the estimated cost of the inquiry..

The areas in which the costs of an inquiry arise are reasonably predictable, even if the final total cost is not.

Substantial costs that will be incurred in any inquiry will almost always include:

- remuneration and expenses for chair and/or panel;
- salaries and expenses for inquiry staff including the secretary and solicitor;
- fees for subject experts and inquiry counsel;
- other witness expenses (loss of earnings/time, travel and subsistence or other expenses of attending the inquiry);
- accommodation for offices and hearings, including fitting out and furnishing, the cost of which will be influenced by the availability of suitable premises and their condition;
- IT equipment, including for document management and reporting hearings;
- website, communications and media relations; and
- costs for supply of SG corporate services, for example HR services and costs relating to the supply and support for staff.

In view of the difficulty in predicting the volume of evidence and the length of time required by an inquiry, it is essential that these other predictable costs are tightly controlled as far as possible.

It is also critical that the inquiry stays within its term of reference. Where a Minister believes that there are matters in respect of which the inquiry is acting outside its terms of reference, or is likely to do so, they may give notice to the chair specifying those matters and the reasons for their belief, known as section 39(4) certification.

In such cases, the Minister is not obliged to pay any amounts or meet any expenses in so far as they relate to matters certified by the Minister to be outside the inquiry's terms of reference and to any period after the date on which the certification was given.

8.4 Advice and help

Early contact will have been made, by the sponsoring team, with the appropriate Finance Team and Procurement Team within the Scottish Government who will be able to provide, amongst other things, a discrete cost centre, advice on the use of an appropriate financial reporting system and advice on the Scottish Government Procurement Framework. Consideration should also be given where practicable, to including staff within the inquiry team who understand the financial system.

9. Staffing and resources

Advice from past inquiry teams is that the sponsor team should have, before the inquiry team itself comes into being, entered into advance dialogue with key service providers within SG and to set up meetings to discuss staffing, funding, property and IT issues.

Scottish Government support for the inquiry in the provision of resources should be flexible and able to respond constructively to inquiry requests for assistance in relation to HR, library services, accommodation, and the provision of equipment such as furniture and stationery, but reasonable time needs to be given for this. iTECS will provide the necessary support for any ICT services it supplies to the inquiry and will be subject to any charge back arrangements.

The sponsor team has, however, no say or influence in the running of the inquiry once it is set up. This is entirely the responsibility of the chair.

9.1 Staffing

As well as the critical appointments of the secretary, solicitor and, if required, counsel to the inquiry, a wider inquiry team will have to be established who have the right skills to undertake the various functions which the efficient operation of the inquiry will require. Advice from SG HR can be sought at any time to assist with staffing issues.

The lessons learned report for the Fingerprint Inquiry noted that an independent inquiry is, during its lifetime, relatively isolated both physically and in terms of the need to have distance from Government. All members of the team have to have the resilience to cope with this isolation and they must all work well together as part of a small team. Often the team is built gradually, mainly by the secretary of the inquiry under the direction of the chair.

Inquiry staff may be assigned from the Scottish Government or other public bodies or legal firms, be self-employed individuals, or be recruited externally through recruitment agencies.

In particular, staff with specialist skills, for example in statement taking and document management, may need to be recruited externally. Some may only be required for a specific period of time (for example for the period over which statements are being gathered).

Building on the experiences of previous inquiries, required personnel are likely to include:

- Those with knowledge of financial systems.
- Those with knowledge of information management principles and practices.
- Those with knowledge of IT systems, including systems for simultaneous transmission of inquiry hearings.
- Senior personnel should have a proven track record of leading and managing teams.
- Paralegals, or other precognition agents, to take witness statements.
- A Scots law qualified deputy solicitor, if the solicitor is not Scots law qualified.
- Administrative and clerical support, particularly during hearings.
- Public relations consultants to deal with media relations throughout the inquiry up to the day of publication.
- Consultants for short term functions, such as acquisition and set-up of accommodation.

9.2 Procurement

When a public inquiry is contracting for services to assist in its work, this is likely to constitute a public services contract within the meaning of procurement regulations. Therefore, where a procurement issue arises, related to the running of the inquiry, procurement advice should always be sought to ensure that the inquiry complies with up-to-date procurement legislation. Advice can be sought from Scottish Government Procurement Team (SGPT) or the local Delegated Purchasing Officer depending on the approach set out in the Management Agreement.

Early, collaborative planning of the inquiry's procurement needs will ensure they can be adequately resourced. Without this early engagement, delays to the inquiry can be substantial.

Where possible, a public inquiry will be expected to use Scottish Government pre-existing contracts for the supply of goods or services. Where this is not possible, procurement must be undertaken in line with the Scottish Public Finance Manual. This means by way of a competitive tendering exercise, in line with the processes set out in the Procurement Journey and can only be carried out by someone with the appropriate authority.

As the length of an inquiry is difficult to predict, the flexibility to permit contracts to be extended should also be considered from the outset. For example, a contract could be placed for a 1-year period with the option to extend for a further year. If this is not considered at the outset, procurement regulations may require a second tendering exercise which would not only be costly and time-consuming, but it might also impede an inquiry's progress.

The likely major procurement exercise for all public inquiries will be the procurement of IT for the inquiry for data management and hearings, including a real-time transcript management programme.

For the provision of PR and media support, the Vale of Leven inquiry used the Scottish Government framework agreement for Marketing Services and ran a mini-tendering process.

9.3 Accommodation: office

Property Division, in liaison with Workplace Division, will provide guidance regarding the identification and acquisition of suitable office accommodation for the inquiry team. Owing to the overall imperative that the inquiry should be independent of Government, and should be seen to be independent of government, this should not be in the Scottish Government core operational estate although initial consideration should be given to any surplus estate property and suitable premises available on the wider public sector estate. This process can take a great deal of time, it can take up to 18 months to procure and fit out offices, so early contact with Property Division is essential. It is also worth keeping in mind that some inquiries have moved into SG property for the final stages of their inquiry with rent charges applicable.

Property Division will act as the initial point of contact for the accommodation requirement and assess the accommodation needs. Property Division will liaise with Workplace Division to identify whether there is any surplus estate property that may be suitable and to agree what initial advice may be required for setting up.

If Scottish Government surplus accommodation is chosen then Workplace Division will usually co-ordinate the fit-out arrangements. However, if it is private rented accommodation then the inquiry team will require further advice from Property Division and Workplace Division on the external professional services they will require.

A number of factors should be considered when choosing the inquiry venue. These will differ for different inquiries, but these factors are likely to include:

- Able to meet the security needs of the inquiry and capable of secure storage for inquiry papers, electronic records and evidence.
- Able to cable for any electronic systems (an example might be LiveNote).
- Space for private, secure and appropriately equipped office space for the chair, panel (if any) and inquiry team.
- Accessible, including for disabled people.
- Proximity to affected persons.
- Proximity to public transport.
- Cost.

9.4 Accommodation: hearing

The location of accommodation for hearings, where witnesses will give oral evidence, will be dependent on their frequency and likely duration. Consideration should be given to whether separate and larger premises are likely to be required or if those can be accommodated within the inquiry's offices.

Several inquiries have used the Maryhill Community Centre for oral hearings which was kitted out for the ICL Stockline Inquiry and has also been used for fatal accident

inquiries, as have the City Chambers in Aberdeen. The Maryhill premises have the IT equipment necessary to ensure the proper conduct of the inquiry, the viewing of documents, and the recording of proceedings. The use of such a venue or working with other live inquiries to share a hearing venue, can save time and a considerable amount of money given expensive leased accommodation can be sitting largely unused and empty for long periods of time otherwise.

In addition to the requirements mentioned above for the offices used by the inquiry, the hearing venue will also require:

- Support rooms for the parties involved in the inquiry (core participants and witnesses) and their counsel.
- Space for transcript writers, audio-visual engineers, IT support, and media.
- Reception area for the general public, with toilet facilities.

Apart from a large room where the oral evidence is heard, separate smaller rooms are also required for the use of the chair and the inquiry team. Some element of security will be required, this should be discussed with Workplace Division and Office of Protective Security in relation to access controlled doors.

9.5 IT

Inquiries have a choice of using SCOTS including eRDM or procuring their own IT and case management systems. If the inquiry opts for SCOTS, iTECS have a template agreement (drafted for SCAI) which includes contribution on cost recovery basis and covers data processing.

The sponsor team, HR and ITECS should discuss these issues at an early stage of setting up the inquiry and if SCOTS is to be installed, it is essential that Scottish Government's Security is consulted as part of the assessment of accommodation. Property Division should be informed of the decision as it might require landlord's consents for cabling which can take 6-9 months to obtain.

9.6 Data protection

An early determination should be made as to whether the inquiry is a data controller for the purposes of the UK GDPR and Data Protection Act 2018 (DPA 2018).

A controller is defined as a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.

The key question to ask is whether the inquiry team are processing information and data on behalf of the commissioning Minister (in which case Scottish Ministers would be the controller) or (as is more likely) they, as a matter of fact, determine the manner and purposes for which personal data is processed. This will involve consideration of matters such as the sources of information, whether it constitutes personal data and the degree of independence.

If the inquiry is deemed to be a controller then it must register with the Information Commissioner's Office (ICO) and pay a fee. However, as inquiries do not have a separate legal personality it will be necessary to identify which individual(s) will be the data controller. This may be the chair or another member(s) of the inquiry team. It may be the same person(s) who has been identified as being able to enter into contracts and undertake other legal acts on behalf of the inquiry.

Guidance from the ICO in respect of organisations lacking legal capacity provides that for convenience the organisation as a whole (i.e., the inquiry) may be identified as the controller but for legal purposes the controller will actually be the relevant member(s) who make the decisions about the processing by the organisation.

Art 37 UK GDPR sets out when it is mandatory for a controller to appoint a data protection officer. One of the conditions is that the processing is carried out by a public authority or body. Another condition is that the controller processes on a large-scale special category data (as defined in Art 9) or data relating to criminal convictions. Inquiries should therefore appoint a DPO who may be internal or external.

The inquiry will be obliged to comply with the requirements of the UK GDPR and DPA 2018 and this may include undertaking Data Protection Impact Assessments (DPIA) and publishing a privacy notice.

The data controller may change when the inquiry record is passed to the National Records of Scotland (NRS) or to the sponsor team. The inquiry team must therefore liaise with NRS and the sponsor team to ensure data processing activities continue to be compliant after the end of the inquiry.

If Scottish Government e.g. iTECS provides services to the inquiry and this involves the processing of personal data then Scottish Government will be a data processor acting on the instructions of the inquiry as controller and a legally binding data processing agreement must be entered into between Scottish Ministers and the legally entity which is the controller e.g. the chair. This can be incorporated into any services-type agreements entered into such as the iTECS service agreement.

The Information Assurance and Data Protection team can provide support to the sponsor team but, should they require it, the inquiry team must seek their own data protection advice independent of the Scottish Government.

9.7 Freedom of Information

An inquiry is exempt from the requirements of the freedom of information legislation whilst it is in progress.

This is not the case when the inquiry record is passed to the National Records of Scotland (NRS) or to the Sponsor team if records are passed to them. The inquiry team must therefore liaise with the staff of the Keeper of the Records of Scotland to ensure that they have considered the potential for FOI requests in relation to the record when it is passed to NRS.

The inquiry must carry out a thorough sensitivity review of all records prior to transfer to NRS to determine whether they can be opened immediately, whether any FOISA exemptions apply, and if so, for how long. This needs to be done at document level and note where information is in the public domain (e.g. published on the inquiry website). The sensitivity review needs to be carried out according to NRS standards/guidance/instructions. If this is not done properly, and records are closed unnecessarily to public scrutiny, there is a serious risk of lack of public confidence in the findings and integrity of an inquiry. The Dunblane (Cullen) Inquiry shows the negative impact of large numbers of public inquiry documents being closed for 100 years due to sensitive personal info, and this required a large-scale redaction exercise by the Crown Office - but only after adverse publicity.

There is a statutory obligation on the Chair to ensure that the record of the inquiry is comprehensive and well-ordered. This emphasises the ongoing nature of the recordkeeping responsibility.

9.8 Risk registers

An inquiry should identify and manage risk by the maintenance of a detailed risk register. Some risks will be common to all inquiries, such as judicial review of the inquiry's significant decisions and the warning letter process. Others will be more specific to that inquiry or a particular stage of the process.

The sponsor team might also maintain a risk register.

9.9 Legal indemnity for inquiry team

The 2005 Act states that the chair, and any other members of an inquiry panel, an assessor, counsel or solicitor to an inquiry and any person engaged to provide assistance to an inquiry, are immune from civil proceedings in relation to any act or omission made in good faith as part of their inquiry duties during the course of the inquiry.

In relation to the law of defamation, statements made in inquiry proceedings (including the inquiry's report) benefit from the same legal privilege as if those proceedings were before a court.

More generally, paragraph 18 of the Insurance section of the SPFM makes clear that any office holder appointed by Scottish Ministers, who has acted honestly and in good faith, should not have to meet out of their own personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where the person acted recklessly. This would apply to chairs of non-statutory inquiries (and any other office holder appointed to an inquiry by Ministers.)

Indemnity is essential in order to ensure a strong candidate for chair and it is provided for in the 2005 Act.

9.10 Website

A website should be created for the inquiry and branded with its corporate identity to emphasise its independence from the Scottish Government. The Digital Communications Team can provide advice and guidance and generally an external developer is required to create and manage it.

The website should be easy to navigate and designed as a permanent feature. The site will remain in place for a number of years even after the inquiry finishes. Steps need to be taken to ensure that the domain name is secured once an inquiry has concluded to prevent cyber-squatting (see Vale of Leven Inquiry). The website is an information asset which should be on the inquiry's asset list.

The website address should be 'dot org', or equivalent, rather than 'dot gov' in line with its independence, but it should otherwise adhere to the Digital First Service Standard: <https://resources.mygov.scot/alpha/service-standard/digital-first/> .

The 'record of the inquiry' includes the website, which must be archived. The website will also remain a crucial tool for public access after an inquiry has reported. NRS have a Web Archiving & Web Continuity Service, as they will archive the website throughout the lifespan of the inquiry - not just at the end. There is also SG guidance on creating websites, ensuring domain names are not appropriated after the inquiry closes.

9.11 Judicial review

Decisions taken by the chair of the inquiry, including those taken by inquiry team members on their behalf, may be liable to judicial review. The solicitor to the inquiry will provide advice on the requirements of administrative law in the context of the decisions that must be taken by the inquiry and its procedures.

Although it may be rare that an inquiry will be judicially reviewed, measures may be put in place to manage the impact of any such challenge. The Vale of Leven Inquiry lodged caveats at the Court of Session, Edinburgh Sheriff Court and Glasgow Sheriff Court so that the inquiry would be warned in advance if anyone applied for interim interdict against the inquiry. Consideration may have to be given to how the inquiry would be represented in the event of judicial review.

Inquiry teams should discuss Judicial Review early in the process of establishing the inquiry, in order to minimise the risk to the inquiry once it begins to operate.

9.12 Travel and subsistence

An inquiry should adopt the latest Scottish Government Guidance on Travel and Subsistence expenses for the payment of these costs to core participants and witnesses. Protocols, guidance and application forms will need to be developed and agreed.

An application for funding may be made using a form along the lines of:

9.13 Induction and guidance

The sponsor team should provide induction guidance to the core inquiry team, including as a bare minimum the Scottish Government guidance for inquiry teams, as well as any other background materials which may be specific to that particular inquiry.

10. Communications and relationships

The chair of the Fingerprint Inquiry suggested that a successful inquiry would have the following features:

- Interested parties would believe that a thorough inquiry into the issue which had caused public concern had been conducted, with obvious fairness, and that the final report was not over-written or under-researched;
- Interested parties would feel that they have been given an opportunity to present their views;
- The inquiry reaches conclusions that are justified by the evidence in a way that is cost effective; and
- The inquiry produces a report that people understand.

Clearly a significant aspect of the work of an inquiry, separate from but crucial to its investigative role, is to communicate effectively with all interested parties during the inquiry.

10.1 Relationships with interested parties

In most cases there will be specific interest groups which have pressed for the establishment of an inquiry. They will often have clear expectations about what they wish to see come from the inquiry and how it should be conducted. Such groups may have had relatively frequent previous contact with officials and Ministers. As these groups often have insight into the issues being discussed, it can be helpful if their perspective can be considered from the earliest stages, for example when the terms of reference are being developed.

It is important for Government to be as open and inclusive as possible with interested stakeholders while it considers the need for an inquiry and then, if appropriate, moves to establishing one. This will include careful management of expectations if interest groups expect to receive apologies or compensation, or expect wrongdoers to be punished. Inquiries are inquisitorial and not adversarial in nature; they cannot apportion blame or guilt in the civil or criminal sense.

For that reason, you may find that your sponsor team has existing relationships with many parties with an interest in the inquiry. However, it is the chair's inquiry, after appointment, and their personal style and approach should be reflected in dealings with these groups.

10.2 Relationships between the sponsor team and the inquiry team

It is important that the sponsor team and the inquiry have a strong relationship. It allows for Ministers to be kept informed of progress and for monitoring of issues that could impact costs.

Additionally the sponsor team will be able to help you access SG corporate functions for support (for example HR).

10.3 Website

Every inquiry should set up a website as early as possible. It may be used to provide details of the progress of the inquiry and other information such as:

- the inquiry's contact details, including telephone number(s) and postal and email addresses;
- the key members of the inquiry team;
- the terms of reference of the inquiry;
- the ongoing costs of the inquiry;
- news and updates;
- a glossary of terms used by the inquiry;
- guidance on general inquiry procedures, including protocols on giving evidence other than oral evidence, funding for legal representation, core participant status, expenses, compensation for loss of time, etc.;
- application forms for core participant status, cost of legal representation, expenses, etc.;
- frequently asked questions;
- key documents such as the management statement agreed with the Scottish Government and determinations made by Scottish Ministers under sections 39 and 40 of the 2005 Act setting out what expenses will be paid to the inquiry team and what expenses will be paid to core participants and witnesses for legal representation and expenses for travel and loss of time, etc.

10.4 Document presentation at hearings

As well as ensuring that the core documents are available to the parties to the inquiry during oral hearings, the inquiry should also arrange for the daily transcript of the evidence to be available on the website.

10.5 Arrangements for media handling

Since inquiries are set up owing to public concern over a specific incident, there is likely to be significant and continuing media interest in the work of any inquiry. There is also a need to be aware of the sophistication of interest groups' ability to influence the media.

The inquiry must ensure that its independence is clear and understood. Its media strategy must be separate from the advice given to Ministers on media handling of issues surrounding the inquiry. For many inquiries, there will be close media scrutiny

of its processes, its fairness, and of the evidence that is given to it. The inquiry should therefore arrange for its own media advice and support to respond to any media coverage or queries rather than seeking support from SG Communications teams.

The Vale of Leven Inquiry appointed an external PR agency to deliver a media and PR strategy for the duration of the inquiry. It was commissioned to prepare press releases and to engage pro-actively with the media at critical points in the inquiry's lifespan, such as the call for evidence, launch of the inquiry's website, the start of public hearings and subsequent extensions to hearings. The agency prepared media briefings as required and provided a media monitoring service on press coverage of the inquiry. Media training was provided to senior members of the inquiry team.

The Vale of Leven Inquiry team found the engagement of an external PR agency invaluable in ensuring that the media and the public were kept informed of the inquiry's progress, whilst permitting inquiry team members to concentrate on the work of the inquiry.

There is, of course, a possibly significant financial cost in engaging an external PR agency which should be acknowledged at the outset in the inquiry's budget. Alternatively, media management can be done in-house.

Document management

Any public inquiry can expect to receive large quantities of documentary evidence, including written statements, background papers, articles, etc. The Edinburgh Tram Inquiry may be an extreme example, with 6 million documents, but most inquiries will have to cope with at least several thousand documents, which will have to be analysed, cross-referenced, and made instantly accessible to the inquiry team and to core participants.

It is suggested that a 'core bundle' should be prepared that can be easily retrieved and supplied to the parties to the inquiry as appropriate. This core bundle can bring together documents that give an overview of the evidence the inquiry is considering, or contain enough information to allow those new to the subject of investigation to get up to speed. This can be particularly useful when inquiries gather very large amounts of information.

It should be made clear to parties that any information provided to an inquiry is likely to become public, unless agreed otherwise by the chair in advance of its provision. It is also helpful to alert parties that any information provided to an inquiry may be archived. This will also naturally include personal sensitive data (Data Protection Act 2018 'archiving purposes in the public interest'). This can be done via a data protection statement.

Again, this can cause problems for inquiries if left to the end.

10.6 Procurement of IT system

All public inquiries will require a document management system to store and make documentary evidence instantly available to the inquiry team and core participants. A court reporting system will also be required for use during the oral hearings so that the oral evidence given to the inquiry can be made available alongside written statements and other documentary evidence. This system must allow for efficient sharing of information to the inquiry website. Consideration should also be given to evidence display within the hearing room.

The document management system and the system for hearings should also be compatible. It would be highly inefficient for the inquiry if they were not.

10.7 In-house processes

The inquiry should establish and produce written procedures for all aspects of the document management process. These should include developing processes for:

- following the evidence paper trail;
- receipt, storage, and repatriation of evidence;
- scanning, coding, and distribution of evidence to core participants;
- photocopying;
- core information management policies and procedures:
- records retention & data destruction
- redaction
- data protection
- copyright

Together these will act as an inquiry's information management policy and will be archived by NRS and will act as a manual for future researchers as to how an inquiry operated and managed its evidence. They do not need to be long but should act as a statement of an inquiry's intent towards good record management processes.

Flowcharts are a very useful means of illustrating relevant processes and can be used easily by all members of the team.

The inquiry should ensure that its processes and systems, including for example its own inventory of documents, is capable of functioning well throughout the inquiry. This includes at a later stage when the volume of documents can be very large.

Staff involved in document management should work closely with the legal team to identify which documents will form part of the inquiry record, often leading to submission to the inquiry's electronic database and then archiving at NRS.

10.8 Electronic database

The importance of establishing a productive and positive working relationship with the supplier of the document management system database cannot be over

emphasised. Daily contact may be required with the supplier's Project Manager. Good relationship management will deliver successful outcomes all round.

When procuring a document management system, it is important to ensure that full training on using the system is part of the contract. Subsequent training of new and/or additional staff to the inquiry can be carried out in-house, so developing a local training brief will be very helpful.

When acquiring a document management system, it is also important to consider that the records should be exportable in a non-proprietary and preservable format. There can be a charge for this export by the system vendor, which will need to be budgeted for by the Inquiry.

NRS may be able to provide high-level advice on technical requirements that would support the future archiving of records from a prospective document management system.

Detailed discussions are required between the inquiry and supplier in developing a coding manual for the preparation and distribution of documents. Getting this right at the earliest stages is beneficial to all concerned. All members of the team, both legal and administrative, should be familiar with the manual. Careful consideration should be given to the assigning of document types which should help to reduce difficulties at the reporting stage of the inquiry. Inquiries could consider utilising their eRDM system to identify and/or mark record sensitivities at record creation. This will result in a more accurate sensitivity review of the record of the inquiry. Leaving it until the end of an inquiry will be much more complex, time-consuming and, potentially, incomplete resulting in a risk of sensitive information being disclosed.

Inquiry teams should keep in mind the need, at the end of the inquiry, to transfer of records to the Keeper of the Records of Scotland when they are procuring the document management system and developing the coding manual. Document management contracts must remain in place until NRS confirms that the record of the inquiry has been successfully transferred. Sometimes it is necessary to conduct the transfer a second time and, as such, technical expertise should be retained for that period. There can sometimes be an interim stage where inquiry records are held by the sponsor team before / in parallel with transfer to NRS. This might affect the length of contract / training / system procedures required.

10.9 Redaction of documents

A comprehensive redaction protocol should be developed at the start of the document management process and should cover all aspects of the data protection issues that undoubtedly will arise. NRS requires all documents redacted by an inquiry to have an original, unredacted version as both sets will form part of the 'record of the inquiry' and will be transferred to the Keeper. It will also be helpful for the inquiry to identify at ingest any documents already redacted by the core participant who submitted the evidence. This will ensure future researchers know why a document is redacted (even after any sensitivities have expired) and who conducted the redactions, thereby increasing trust and confidence in an inquiry's findings.

During the reporting stage of the Vale of Leven Inquiry, a number of redaction anomalies were identified that could have been resolved at an earlier stage. Everyone involved in document management must be adequately trained and senior management should be fully aware and involved in signing off documents in the redaction process.

10.10 Use of court reporting system during oral hearings

The experience of the Vale of Leven Inquiry was that it was vital to have a strong working relationship with the system supplier. The right level of technical support and any associated back-up during the hearings is crucial as things can go wrong and lead to costly delays and frustration for all parties. Inquiry staff should be fully briefed to deal with any technical issues arising at hearings and there should be a quick link to a senior member of the supplier team who can assist as a matter of urgency.

It works well if the Document Manager assists in overseeing the work of the supplier's electronic presentation of evidence (EPE) operator and liaises directly with counsel and/or the supplier as required. Sufficient members of the inquiry team should be capable of dealing with technical issues including substituting for the EPE operator if required.

11. Disclosure of information to inquiries by Scottish Government

An inquiry can formally ask for information from the Scottish Government (section 21 of the 2005 Act). It may hold a range of information relevant to the inquiry which could be on old paper files or held electronically.

The relationship between the inquiry team and the sponsor team should allow discussion to take place in advance of any formal request.

11.1 Agreeing processes for the release of information to an inquiry

A memorandum of understanding can be agreed between the sponsor team and inquiry team, that sets out how the inquiry proposes to handle and treat information held by the Scottish Government. It can cover practical issues such as an agreed timetable for informal notifications preceding formal requests, for release of information and the form in which information is released to the inquiry.

11.2 Use of information by the inquiry

Inquiries are required to make the information they gather public. Section 18 of the 2005 Act, requires the chair take reasonable steps to ensure that members of the public (including the press) are able to:

- attend the inquiry hearings or to hear a simultaneous transmission of the proceedings; and
- obtain or view a record of evidence and documents given, produced or provided to the inquiry.

There will, however, be circumstances in which information released to the inquiry is not made publicly available. The duty to secure public access to inquiry proceedings and information can be subject to restrictions either in a notice given by the Minister to the chair of the inquiry, or in an order made by the chair. See the section on Restriction notices and orders.

12. Oral hearings

Public oral hearings are not only the most high profile part of the work of a public inquiry, and most likely to attract media attention, but also the most expensive part of the process. This is owing to:

- the need to hire a venue which is large enough and otherwise suitable for a public inquiry or fit out a suitable space in the inquiry's offices; and
- oral hearings being when most costs are incurred in terms of the day to day legal representation of core participants and witnesses.

12.1 Preparation

The Fingerprint Inquiry team drew attention to the huge amount of preparation work required for public hearings. They thought that it would be helpful if new inquiry teams could attend another inquiry, though it is appreciated that public inquiries are relatively rare and this may not be possible.

Attendance at another inquiry may influence decisions not only about content of the hearings, including preliminary hearings, but also about layout, formality, atmosphere/tone, audibility, personal support for chair, note-taking arrangements etc.

Once tasks for hearing days have been identified, the proposed procedures should be considered from the perspective of each of the different categories of people who will be present at oral hearings and revised if necessary. This is primarily to try to ensure, not only that the hearings will run as smoothly as possible, but also that core participants will feel that they had been given an opportunity to present their views.

Decisions made at the outset of the oral hearing process will affect their duration and content. It is vital to ensure that the inquiry makes optimum use of the available sitting times owing to the chair's statutory obligation to constrain costs.

The inquiry should aim to follow procedures that ensure the gathering of evidence in as full a manner as possible. In determining the lines of inquiry for the hearings, it may be helpful to seek early input from core participants through meetings with their legal representatives asking them for their suggestions, and/or submitting position statements. Whether or not a suggested line of inquiry is pursued or not is for the chair of the inquiry to determine but, unless input is sought from core participants, the inquiry team might not be certain that they are gathering evidence in as full a manner as possible.

12.2 Written witness statements

An inquiry may make written requests² for evidence inviting either written statements, oral evidence, or attendance at a specific time and place to provide a statement to a representative of the inquiry.

Statement takers are often paralegals or precognition agents. Whoever they are, they should be trained in an open question type of technique.

Witness statements submitted to the inquiry should be in writing and signed (which may require a process for electronic signatures), indicating that the witness has agreed that it is accurate. These statements need not be repeated at length at hearings, but taken as read, which will save a huge amount of time at the oral hearings. Inquiry counsel and the solicitor team should prepare advice for the chair's decision on who should give oral evidence, since not all witnesses will need to.

12.3 The hearing

Section 2(1) of the 2005 Act makes it clear that an inquiry is not to rule on, and has no power to determine, any person's civil or criminal liability. Even though section 2(2) stipulates that an inquiry should not be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes, a public inquiry should adopt inquisitorial and not adversarial procedures.

In this context the use of language can be particularly important. For example, the Fingerprint Inquiry thought that using the litigation language of 'disclosure of points for cross-examination' was not helpful to that inquiry when what was wanted was an indication of specific issues.

The Inquiries (Scotland) Rules 2007 set out some detail relating to how hearings are to be conducted, including some controls over examination of witnesses and the use of a live television link, which could save considerable time and therefore control costs.

Using a real-time transcript management programme can make the oral evidence available almost immediately for review and annotation by inquiry counsel and core participant representatives. Using a suitable system can also ensure that participants at hearings can access earlier evidence, scanned images, etc. from their desks in the inquiry hearing room.

It is likely that additional staff will be required for the public hearings including security and more administrative staff. Having lawyers (counsel, the inquiry solicitor, and possibly deputy solicitors) with court experience on the team can be essential, though this should be addressed when the inquiry team is being assembled.

² Rule 8 of the 2007 Rules.

What happens each day at the oral hearings should be meticulously organised and run by the inquiry's administrative team from an office on site. This will include liaison with witnesses and core participants and can therefore require a level of sensitivity.

To ensure the efficient running of the hearing, work can still be ongoing behind the scenes as evidence is being heard. Not all of the inquiry staff need to sit through all of the oral evidence. Throughout the hearings/oral evidence it is essential that staff with sufficient expertise and authority are available to respond to unexpected issues as they arise, for example can request an adjournment due to technical issues.

12.4 Frequency of hearings

Because of the demands on the inquiry team and possibly also on core participants, oral hearings are the most pressurised part of a public inquiry.

The Vale of Leven Inquiry team concluded that hearings should not take place on more than four days a week, since they thought it was essential to have a day for review of the previous week's evidence, to prepare for the following week, and to undertake the necessary administrative duties of the inquiry team.

That team also believed that it was not possible to sustain more than three, or at the most four, weeks of hearings without a break. This was because it was believed that counsel would be unable to keep up with the number of witness statements and documents to be considered in hearings and to prepare adequately. They also suggested that the chair requires time to consider the evidence which has been led, whether additional evidence should be led and whether a change of direction is required.

12.5 Procedure after oral hearings

In court proceedings, a judge's findings will be based upon the evidence led in court. The evidence available to an inquiry is not restricted to oral evidence or even to evidence that would be admissible in a court of law.

In addition to scrutinising all of the oral evidence, the inquiry must study all the documentary evidence available. Its findings will be based upon an analysis of all of that material, which will be a time-consuming process.

At the end of the intensive period of oral hearings, it may be helpful for senior members of the inquiry team to take stock and refer back to the terms of reference of the inquiry to help to focus the planning for the next stages.

13. Warning letter procedure

13.1 During evidence gathering stages

Individuals and other parties may be alerted if it is possible that they may be criticised at inquiries established under the 2005 Act. It is for the chair to determine to whom such warning letters are to be sent and the chair cannot include any explicit or significant criticism of a person in an interim or final report unless a warning letter

has been sent and the recipient has been given a reasonable opportunity to respond to the warning letter.

No single process for alerting individuals and other parties to potential criticisms will be appropriate in all cases, however, individuals affected by an inquiry must be treated fairly. An inquiry can approach this in a number of ways, subject to the 2005 Act and the 2007 Rules made under it. The basic principles within the rules are that:

- before any person becomes involved in an inquiry, the inquiry must be satisfied that there are circumstances which affect the individual and which the inquiry proposes to investigate; and
- before any person who is involved in an inquiry is called as a witness, they should be informed of any allegations criticisms? to be made against them.

The rules ensure that anyone who faces a warning letter is given a fair opportunity to respond to it. Subject to certain exceptions, the contents of a warning letter are to be treated as subject to an obligation of confidence owed by the inquiry team to the recipient of the warning letter and owed by the recipient to the inquiry chair.

The Royal Commission on Tribunals of Inquiry 1966 (the Salmon Report) outlined the general approach on fairness taken by previous inquiries. It set out that, where an individual is to be questioned about allegations or criticisms by the inquiry, they should be

- given notification in writing of the allegations criticisms to be made and evidence in support of those allegations
- not less than seven days before giving evidence.

Notification takes the form of a warning letter, commonly referred to as a Salmon letter.

When warning letters are sent out before public hearings or evidence sessions commence, they may contain limited information or only set out general areas of concern??. Where there is more time for investigation and study of evidence the inquiry can produce a more precise letter.

Warning letters should not be published or publicised in any way, including those sent to Government departments and other public authorities. Inquiries should not notify Government departments of which witnesses have received warning letters.

13.2 Before reports are published

Any participants at an inquiry, in whatever capacity, who will be, or may be, criticised in an interim or final report should have the opportunity to state their case. The House of Lords Select Committee on Post-Legislative Scrutiny of the 2005 Act thought that this was “no more than common sense and common law”.

A ‘Maxwellisation’ procedure builds on and complements the approach set out in the Salmon Report in that the individual who may be the subject of criticisms appearing

in the final report sees the text of what is proposed to be published in relation to them. This approach is now standard practice.

The approach was developed in relation to Department of Trade and Industry company investigations. The principles of this approach are as follows.

- Once an inquiry has prepared a draft of their report, they should write to the witness setting out the intended criticisms, with notice of the evidence on which they are based, giving a fixed period to respond.
- Where an inquiry considers it appropriate, representations made by a witness in response to proposed criticism may be included in the report either wholly or in part.
- Witnesses must formally undertake to treat draft passages of a report issued to them in confidence.
- An inquiry is not obliged to give a witness more than one opportunity to respond to evidence or to possible criticisms, nor are they required to enter into prolonged correspondence with the witnesses about the terms of criticisms or the text of their report. Further views may be sought from witnesses in respect of revised criticisms.

The compilation and issue of warning letters to those liable to be criticised in an inquiry report, in compliance with the 2007 Rules, is likely to be a complex, demanding and time-consuming process.

A warning letter cannot, in practice, be sent until an advanced stage of the preparation of the report. If a letter is sent too early in the drafting process, there is a risk of further criticisms being introduced to the report, which are not contained in the letter.

Once a suitably advanced draft report is available, it must be scrutinised with a view to identifying such criticism. When a criticism is so identified, a statement of facts substantiating that criticism must be drafted for inclusion in the letter with reference made to any evidence or documents which support those facts. To prepare this statement it is necessary to review all transcripts of evidence for any relevant oral evidence and to identify documents supporting the facts (which will not necessarily be referred to in the oral evidence).

Accordingly a warning letter can be a very large document. The longest letter sent by the Vale of Leven Inquiry was 72 pages, and this was not the only one sent to its recipient.

Once a letter is issued, the recipient must be allowed a reasonable time for response. As an example, the Vale of Leven Inquiry determined that four weeks was a reasonable period although some recipients made a case for extension and some extensions were granted.

Some responses received by inquiries may be very long and, although they should be directed at specific criticisms in the warning letter, the experience of some inquiries has been that this was not always the case. Receiving a lot of extraneous material can make the process of evaluating the response lengthy.

The chair is not obliged to take account of the response to a warning letter, although the duty of fairness imposed by section 17(3) of the 2005 Act suggests that this should be the case. In order to demonstrate that responses had been fully taken into account, the Vale of Leven Inquiry reviewed each criticism in the light of the response to it, together with the evidence supporting the criticism and any evidence cited in the response. Tables were prepared in which the inquiry recorded whether the criticism should stand, be removed, or be adjusted in the light of the response. This provided the inquiry with an audit trail with which to meet any challenge to the terms of the Report. This appears to be good practice which other inquiries should adopt.

Once the review process is complete, any amendments need to be made to the final draft of the report. Careful checking will be required to ensure complete internal consistency in the inquiry's findings and conclusions.

In any inquiry in which significant issues have come to light, it is likely that the warning letter process alone may take many months to complete. That will need to be factored into any planning for publication events, and may require some specific communications with core participants as it may appear from the outside that the inquiry is not progressing.

14. Inquiry report

The 2005 Act requires the chair of an inquiry to deliver a report to Ministers.

The report should set out the facts as determined by the inquiry and, if the terms of reference include a requirement for the making of recommendations, those recommendations should also be included. The inquiry may include recommendations in its final report even if the terms of reference did not require them.

The chair should be content that the report is consistent with evidence given and decisions taken throughout the inquiry, that it gives a proper evidential base to recommendations and that the contents do not go beyond the inquiry's terms of reference.

The chair also has the option of delivering one or more interim reports. The production of an interim report may delay the production of a final report, but there may be occasions when the use of an interim report and interim conclusions may provide updates on progress or focus the rest of the work of the inquiry.

14.1 Producing the report

Drafting the report is formally the responsibility of the chair, but they are likely to ask other members of the inquiry team to assist. If an inquiry panel is in place, each member of the panel must also sign the report. This does not preclude the submission of notes of dissent where panel members consider them necessary. If the panel is unable to produce a unanimous report, the report must reasonably

reflect the points of disagreement (section 24(5)).

Owing to the need to consider all of the oral and written evidence which is before an inquiry, the actual production of the final report can take a great deal of time.

It is worth setting out the comments from the Fingerprint Inquiry (in its “lessons learned” report) in relation to production of the final report of the inquiry.

“The editorial process is exacting. A rigorous version control process for each of the report’s chapters is essential. Ours was based on a process for the preparation of a major piece of legislation. It’s helpful to have a note of vocabulary and styling tips from the chair to assist with the editorial task. Even when there is a coherent and well-ordered set of texts in a good state of development there is likely to be further shaping. The order of the chapters can be a big decision, and subject to some change. We were pleased we’d used an editing code to ‘name’ each chapter until very late on when these could be replaced by actual chapter numbers. This also helped when sharing text in the warning letter process.

“The chair’s recommendations may take time to emerge, as some at least may need him to have done the detailed review work first. There are many levels of detail e.g., how to present the recommendations – in the chapters or only at the end – whether to have footnotes and if so how to present these and ensure their consistency. Once texts are becoming settled get a handle on word count overall and per chapter and decide where to reduce – considerable culling may help the overall product.

“Speak early to the printers and publishers and allow enough time for them. You will be asked to make decisions about numerous points of detail on presentation and layout, some of these perhaps earlier than you’d ideally like, in order that they can produce mock-ups. There may be particularities to your inquiry – for example for us how best to present the visual evidence which was of central importance to the opinion evidence.

“We’d been advised to allow at least 3 months from completion of the final report to publication. We did not have that amount of time in the end. It was very tight. A huge effort was needed by the remaining admin team with the publishers to get us to the final finishing line.”

14.2 Responsibility for publishing the report

Sections 24 and 25 of the 2005 Act set out the responsibilities of the Minister and chair with regard to delivering and publishing reports of inquiries conducted under that Act.

If Ministers advise the chair before the setting up date of the inquiry that the chair is responsible for publishing or, if at any point after that the chair is invited to take responsibility for publishing and accepts, then the chair has the duty to publish the report. Otherwise that duty falls to Ministers.

Publication by the chair can be perceived to better maintain the independence of the inquiry and for that reason publication by the chair should be the norm. Additionally the duties placed on the publisher (see below) may be more easily fulfilled by the author of the report.

If Ministers are responsible for publication this could result, for logistical reasons, in some delays in publication.

14.3 Duties of the publisher

The publisher must decide whether any material should be withheld under any statutory provision or rule of law, for example personal information such as medical reports, as required by the Data Protection Act 2018. These decisions must also be considered against the background of what is in the public interest. The public interest will be considered in terms of 'harm or damage', including death or injury, damage to national security or international relations, economic interests or damage caused by disclosure of commercially sensitive information.

Redaction guidance may be found at:

http://www.nationalarchives.gov.uk/documents/information-management/redaction_toolkit.pdf.

Publishing information guidance may be found at:

<https://www.nationalarchives.gov.uk/information-management/producing-official-publications/>.

You can also contact the National Archives:

email: official.publishing@nationalarchives.gsi.gov.uk

phone: 020 8392 5218

Published reports should be available on the web. The inquiry team are responsible for making it available on the inquiry website. If a report is a Parliamentary Paper then it will be published by the Office of the Queen's Printer for Scotland. In addition, print on demand copies should be available to order and purchase for publication and afterwards through TSO.

14.4 Advance access for Ministers

Sight of an advance copy of the report will allow the responsible Minister to prepare a statement to Parliament on the day of publication. Sponsor and inquiry teams should make efforts to reach an agreement on how and when embargoed copies of an inquiry report could be shared.

This was done in relation to the Vale of Leven Inquiry, and at the request of its chair, the Scottish Government developed a protocol for handling of the report and provided a list of staff who would have access to the report.

A reading team was established with responsibility for identifying the key issues in the embargoed report for Scottish Ministers and NHS Scotland. The reading team was housed in a dedicated, secure area in St Andrew's House and the inquiry team were reassured that the confidentiality of the report was maintained.

14.5 Publication event

The publication of the report should be planned carefully. Publicity for the recommendations of an inquiry, which may have lasted some years (and cost a lot of money), is essential to conclude the process.

For the Vale of Leven Inquiry, a detailed project plan was developed for the launch of the inquiry's report in liaison with the inquiry's PR agency.

The choice of an appropriate venue is important in order to convey the seriousness of the proceedings, but also to facilitate any advanced reading period on the day. Familiarisation visits may be required but forward planning should anticipate and manage risks, obviously including media reaction, on the day.

Detailed briefing packs can be prepared for core participants and other interested parties, setting out what is going to happen on the day, to help everyone develop reasonable expectations.

The inquiry team can also meet the legal representatives of core participants to set out the chair's expectations as to how they may support their clients at any advance reading and later in dealing with the media at the launch of the report.

14.6 Advance access for core participants

The 2007 Rules place a duty on the chair to provide core participants and their legal representatives with a copy of the report prior to publication. The recipients are placed under an obligation of confidence owed to the chair (and actionable by the chair) until such time as the report is formally published.

Individual undertakings should be obtained from each person to whom an advance copy is provided, or access permitted, specifying the conditions of use. A model undertaking can be used:

"I [name] hereby agree and undertake to [inquiry chair] that in consideration of receiving/being given access to his report before its publication, I will keep wholly confidential and not disclose, copy or otherwise communicate or give any indication of any part of the contents of [inquiry chair's] report into [subject matter] to any person or organisation whatsoever, save for the other individuals named in the attached schedule (who have given an undertaking in similar terms) until the conclusion of [inquiry chair's] statement on his report on [date] / until the after publication of the report on [date]."

In practice, the advance notice will normally only be a matter of a few hours, but will require a controlled environment. The chair may arrange for the report to be inspected at a place or places which provide reasonable access, but in a manner which does not permit the copying or transmission of the report. The chair may specify other conditions depending on the circumstances.

These provisions enable core participants to ready their response and if necessary media lines.

If the duty to publish lies with Ministers, the sponsor and inquiry teams will have to work especially closely to ensure that the requirement to give advance notice and the publication are well co-ordinated.

14.7 Selection of documents for the inquiry record

The Keeper and their staff have been involved with previous Scottish public inquiries therefore they are well placed to advise on best practice in the light of those inquiries. The Chair is under an obligation by virtue of Rule 16 of the Inquiries (Scotland) Rules 2007 to consult the Keeper on the manner and format of creating, maintaining and transferring the record of the Inquiry.

Early contact and discussion will have benefits for the inquiry in terms of the efficient and accessible storage of documentary material and can also avoid the inquiry's record having to be reorganised before onward transmission to the archives.

At the end of the inquiry, the chair must transfer those parts of the inquiry record which they consider appropriate to the Keeper, though the Keeper and their staff will be able to advise on the kind of material which merits permanent preservation in the archives and the chair may wish to have regard to that advice.

It is understood that some inquiry teams have taken the view that only the chair and other members of the inquiry team can truly assess what value or significance documents have had for their inquiry. The fact remains, however, that the inquiry team will almost certainly have no experience of record selection and of what merits permanent preservation in the archives. This may result in either too little, or too much, of the material from the inquiry being preserved.

15.

Ideally, early and continued liaison between the Keeper and the chair will result in agreement over the selection of the inquiry record for permanent preservation.

Careful regard should be had to any confidentiality undertakings given by the inquiry.

15.1 Freedom of Information requirements

The Keeper of the Records has previously expressed concern over the legal position of material produced by a public inquiry in relation to Freedom of Information (FOI) legislation. Such material is not subject to FOI whilst an inquiry is ongoing, but once the inquiry comes to an end and the record is transferred to the Keeper, it loses that protection, subject to the usual exemptions. NRS recommend that an inquiry, while not subject to FOI, should act as it is subject to legislation as part of good records management practice.

A sensitivity review for all FOI exemptions must be completed at document-level before the conclusion of an inquiry. The Chair and other members of the inquiry team are best placed to assess the value and significance of inquiry documents in

relation to FOI. This must be conducted throughout the lifetime of an inquiry before a final review is conducted prior to transfer

Not all records produced by an inquiry will be transferred to the Keeper however. The sponsor department will need to retain certain classes of information (e.g. staffing, financial, accommodation records) for the regulatory defined period of time and these records will also be FOI-able.

The Keeper and their staff will not be familiar with the material which is to be transferred to them, making decisions on release of documentation on request very difficult without further information from the inquiry as to the status of each document. Once the inquiry team has dispersed at the end of the inquiry, there will be no-one else with that knowledge, since officials within the Scottish Government will also have no familiarity with the material. The problem may be exacerbated by the volume of material collected by an inquiry and if left to the end of an inquiry. It is therefore recommended that an inquiry identifies any sensitivities at record creation/ingest. The sensitivity review should also be conducted at document level.

The chair and other members of the inquiry team are, therefore, best placed to assess the value and significance of inquiry documents in relation to FOI, including their confidentiality status and future public access requirements. It is therefore essential that, when the Keeper is being consulted by the chair about the material to be transferred at the end of the inquiry, an assessment is made and agreed of the confidentiality status of the record of the inquiry before it is transferred to NRS. This will assist the Keeper in providing public access to records in the future and guide them and their staff in dealing with future FOI requests. The NRS will be in a position to provide guidance on this.

16.

National Archive guidance instructs UK inquiries to ensure that they identify and document FOI exemptions which may apply to records selected for permanent preservation, including the period for which exemptions will apply. There seems no good argument why this practice should not also be adopted in Scotland.

<https://webarchive.nationalarchives.gov.uk/+http://www.nationalarchives.gov.uk/information-management/manage-information/planning/public-inquiry-guidance/sensitivities-review/>

16.1 Disposal of material

The question arises as to what should happen to material which is not considered worthy of permanent preservation and therefore does not form part of the record that is transferred to the Keeper of the Records of Scotland. If the inquiry has chosen to use eRDM, decisions on disposal must be taken ahead of storing, as file types determine retention and destruction schedules. NRS will agree with each inquiry which eRDM files should be permanently preserved. Often this can't be finalised until close to the end of an inquiry's lifespan as new record types are created, but NRS should be consulted throughout an inquiry's life and eRDM retention/disposal schedules can be altered if they agree a file needs to be preserved.

The inquiry team will have to decide whether:

- material should be returned to the person who provided it to the inquiry;
- destroyed (with the agreement of the person who provided it to the inquiry where relevant); or
- transferred to the Scottish Ministers to be retained until such time as the Scottish Ministers see fit to destroy it.

All decisions on whether records are transferred to NRS or destroyed must be agreed in advance with NRS.

These decisions will clearly depend on the kind of material the inquiry has been considering, and its sensitivity. This will be judged on a case by case basis. If a formal commitment has been given by the inquiry to return, destroy, or delete information provided at the end of the inquiry, such a confidentiality undertaking should be adhered to and there should be no question of the confidential information being passed to National Records Scotland or Scottish Ministers.

Whatever happens to the material, a schedule must be prepared by the inquiry team listing the method of disposal of all this material. If the decision is that there is a part of the record that should be transferred to Scottish Ministers, early discussion between the inquiry team and the sponsor team helps to ensure an efficient transfer. The schedule, or information asset list, should detail disposal decisions for all records including those transferred to NRS for permanent preservation, to sponsor, destroyed etc; and this schedule will be part of the permanent record at NRS.

17. Closing down a public inquiry

Once the inquiry report is published, and records are suitably disposed of, the inquiry team will still have a number of tasks to complete before the inquiry can be closed down. This will include tasks that can incur significant costs, if mismanaged, such as ending leases for accommodation.

17.1 Suspending or ending an inquiry

Although an inquiry will normally end once its report is published, Ministers may suspend an inquiry to allow for the completion of any other investigation (for example a fatal accident inquiry) or the determination of civil or criminal proceedings. Ministers may also, for any reason, end the inquiry entirely.

In both cases they must first consult the chair and a notice or a statement is required to be provided to the Parliament. Any such action should be considered very carefully, it will likely prove to be controversial and may also have knock on effects for the public's perception of the inquiry process as a whole.

17.2 Expenses claims

Final expenses claims should be assessed and paid, assuming that they are agreed. If the claims for legal representation are not agreed, then it may not be possible to

formally close the inquiry until these have been reviewed by the Auditor of the Court of Session.

17.3 Inquiry accommodation

The office used by the inquiry will have to be closed. Any larger premises used for oral hearings may only have been rented for the duration of those hearings, but the office used by the inquiry team for the other work of the inquiry will have to be vacated and cleared out. There may be cost implications if the accommodation needs to be reinstated back to its original condition and service contracts (such as cleaning and utilities) will need to be terminated.

A record should be kept of important dates, for example when legal notices should be served timeously (e.g. for a lease break notice), and ensure that measures are in place to reduce exposure to unnecessary expenditure. Guidance should be obtained from Property Division on rights and obligations, especially in relation to the termination of a lease and options to relocate when the full extent of accommodation is no longer required. They will also recommend when legal advice or other professional building services should be sought.

17.4 Office furniture and equipment

It is assumed that, in the interests of minimising expense to the public purse, office furniture and equipment will be lent to an inquiry by the Scottish Government where it may have suitable surplus available, and that this will be returned at the end of the inquiry should it be requested and subject to its condition. Associated supply and removal costs will fall to the inquiry.

17.5 Website

The website for an inquiry should make it clear when an inquiry has been wound up and should contain a link to the final report. An inquiry should make sure that the sponsor team retains the domain name and a re-direct is set-up which will take any visitors to the web-archived version of the website once the active website has been closed. NRS can provide advice on this to inquiry teams.

17.6 Lessons learned report

Whilst each inquiry is unique, there are common features to them all. This guidance has partly been drawn from the experience of previous inquiries and in particular the lessons learned papers drawn up by some of the secretaries of those inquiries.

It will always be the case that new inquiries will meet different and new challenges, and will devise innovative ways to meet and overcome them. That experience and expertise should not be lost. There is no substitute for the knowledge accumulated by inquiry teams therefore Secretaries of inquiries should, at the very end of the inquiry process, write a lessons learned paper on their experience. That paper should be submitted to Civil Law and Legal System Division in order for the guidance to be reviewed and updated (if necessary).

The paper, which should focus on the process of the inquiry and difficulties that were experienced and overcome, should be submitted shortly after the publication of the final report.

As a minimum the paper should include information on:

- any relevant statute and powers as well as the terms of reference;
- timetable and description of different stages of the inquiry, including any private or public elements;
- overall cost and a breakdown including pay rates for the chair, panel, lawyers and any experts engaged;
- location;
- relationship with the sponsor department;
- IT and Information Management;
- staffing structure;
- publication, including the form and detail of any prior access given; and
- any particular difficult issues faced by the inquiry or areas on which the inquiry would have benefited from guidance and on which the inquiry can offer advice for future inquiries.